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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN DOMINATION

Written statement submitted by the International League for the Rights and Liberation of Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 February 1998]

The right to self-determination and the question of Mountainous-Karabakh

The concept and the right

1. The concept of peoples' right to self-determination has played a fundamental role in shaping the world during the period following the Second World War. This concept is grounded on the first article of the Charter of the United Nations which states that one of the goals of the newly founded Organization is to foster international relationships based on the respect for the principle of peoples' self-determination. The Charter also refers implicitly to the same principle in its article 73 where it is said that those Member States which administer territories inhabited by non-autonomous populations have the duty to provide the necessary conditions for their economic, social and political development.

2. The concept became a basis for law in 1960 when the General Assembly adopted the Declaration on the granting of independence to colonial countries and peoples, contained in resolution 1514 (XV), which states that all peoples have the right to freely determine their own political status and freely pursue their own development. These rights were solemnly reaffirmed in 1966 in the first articles of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights.

3. The resolution 1541 (XV), also adopted by the General Assembly in 1960, mentions the principles to be respected in implementing Article 73 of the Charter and, among other things, highlights a variety of schemes that can be considered as possible means to bring to an end the non-self-governing status of a territory, namely, independence, free association with an independant State or integration with an independent State.

4. Finally, through its resolution 2625 (XXV) adopted in 1970, the General Assembly provides an explicit formulation of the right to self-determination: it both reaffirms the peoples' right to self-determination, according to the principle of peoples' equal rights, and urges those States concerned with preserving their own territorial integrity to accept the principle of peoples' self-determination, thereby establishing limits to the concept of territorial integrity.

Implementation

5. These resolutions provided the foundation for international law to legitimize decolonization, specially in Africa and the Pacific Islands. But the significance of the concept of self-determination and of its implementation goes far beyond the issue of decolonization. It was used to settle litigations (e.g. the Sarre case) and served as basis for conflict resolutions (e.g. in the Algeria war). Furthermore, the United Nations have specifically supported the self-determination stance of the peoples of Rhodesia-Zimbabwe, Namibia and Palestine, not to mention South Africa. The creation of Bangladesh, and its accession to the United Nations, resulted from the implementation of the same concept.

6. More recently, the acceptance by the international community of the painful dislocation of former Yugoslavia, and the more smooth separation between Slovakia and the Czech Republic are practical implementations of the right to secession.

7. The dissolution of the USSR in 1991, and the secession proclamations of several Republics during the months that preceded it, coincided with the emergence of several requests for self-determination - until then stifled by the Soviet system - from various territories, particularly in the Caucasus. The case of Mountainous-Karabakh came to the open precisely at the time when the first signs of the USSR breakdown appeared. This case is particularly significant with regard to the implementation of the international law concerning peoples' right to self-determination.

Origins of the conflict

8. The present conflict concerning Mountainous-Karabakh has its origins in the decision taken by the Bureau of the Caucasian Communist Party, in 1921, to transfer the Karabakh region to the Republic of Azerbaijan. The tracing of borders of the so-called Autonomous Region of Mountainous Karabakh, in 1924, made of it an enclave with a strong Armenian majority within the frontiers of Azerbaijan, and an artificial severance of its population from Armenia was imposed. The potential of ethnic tension thus created suited well the interests of the central Soviet power eager as it was to exercise political influence in the region.

9. From the historical perspective, the presence of the Armenians in the whole region of Karabakh, including the area between Armenia and Mountainous-Karabakh, dates from the very beginning of our era. The rule of Armenian dynasties there is attested through centuries. Kept under Russian domination since 1813, the Karabakh region became again part of Armenia when, with the fall of the Russian Empire, the Transcaucasian Republics (Armenia, Azerbaijan and Georgia) were created in 1918. Azerbaijan, which for the first time in history made then its appearance as a State, claimed Karabakh for itself and, in 1919-20, engaged in massacres of its Armenian population.

The conflict and its consequences

10. Following Sovietization and the transfer of Mountainous-Karabakh to Azerbaijan, manifestations - of no avail - were often made by its Armenian population against violence and discrimination perpetrated against them. Their request for emancipation in 1988 was countered with acts of ethnic cleansing in the region and pogroms in other Azerbaijani cities (mainly Soumgait and Baku) which forced out some 400,000 Armenians.

11. In 1991, the population of Mountainous-Karabakh proclaimed its independence. Azerbaijan - which had just broken away from the Soviet Union - waged war and ethnic cleansing operations against Mountainous-Karabakh. Fighting back, Armenians succeeded in reconquering territories that belonged to ancient Karabakh and in forcing out some 600,000 Azerbaijanis. The ceasefire agreed upon in 1994 brought to an end a war that had caused tens of

thousands of civilian and military victims. Meanwhile, Mountainous-Karabakh created for itself a democratically elected representation, a government and a State structure.

13. Since then, discussions to secure permanent peace are under way through a team of negotiators called Minsk Group, under the auspices of the Organization for Security and Cooperation in Europe. The aim is to find a solution to the question of the status of the region concerned while at the same time preserving the borders of Azerbaijan and the return of refugees. But no success has been achieved so far.

The present situation and law

13. With regard to law, particularly to the right to self-determination, the situation in Mountainous-Karabakh presents several aspects:

(a) The linkage of Karabakh to Azerbaijan is simply the result of a decision taken by an organ of a communist party. There is no juridical ground whatsoever, such as an agreement between the States concerned (Armenia and Azerbaijan), to hand out Karabakh to Azerbaijan;

(b) Mountainous-Karabakh proclaimed its independence at the very time when Azerbaijan itself was breaking away from the Soviet Union. The proclamation of independence was in full accordance with Soviet law in force at that time;

(c) The often invoked contradiction between the principle of self-determination and the notion of territorial integrity is artificial. The latter, on one hand, can play a decisive role in the relationship among States to protect borders against external threats. On the other hand, the fundamental right of peoples' self-determination has to do with relationships between a State and a people; failure to respect this right implies raising those reservations mentioned in resolution 2625 (XXV) concerning territorial integrity;

(d) According to the General Assembly resolutions, particularly resolution 2625 (XXV), Azerbaijan cannot in fact have any claim on Mountainous-Karabakh by virtue of its discriminatory policies throughout decades, the 1919-20 massacres of some 20,000 Armenians in that region, the ethnic cleansing of the population between 1988 and 1992 and the massive bombing of civilians in 1991 and 1992.

Possible solutions

14. Lately, another element was added to the juridical, historical and political factors at play, namely, the interests of oil enterprises eager to see peace prevail in the region so that the riches of the Caspian Sea can be extracted and transported abroad.

15. It is unrealistic, however, to try to find a lasting settlement for the conflict on the basis of foreign economic interests and through the pressure these interests can exert. It is equally misleading to take the status quo

for stability. The Mountainous-Karabakh conflict and the approaches to solve it on the basis of such assumptions have already caused the demise of three presidents, the most recent one being that of Armenia.

16. The International League for the Rights and Liberation of Peoples (LIDLIP) believes that the solution to the problem depends, above all, on defining the status of Mountainous-Karabakh on the basis of respect for the right to self-determination. There can be several possible schemes to that effect derived from resolution 1541 (XV):

- recognition of Mountainous-Karabakh as a sovereign State;
- treaty of free association between Mountainous-Karabakh and Azerbaijan;
- union with Armenia;
- interim international supervision in order to arrive at one of these schemes.

Conclusion

17. LIDLIP considers that the search for a peaceful solution to the Mountainous-Karabakh conflict must be through direct dialogue between Azerbaijan and Mountainous-Karabakh authorities. With the support of the Minsk Group to this sort of dialogue, these authorities should be able to reach a solution on the status of the region, as well as on the return of the refugees, and to decide upon the territories presently under military control, taking into account history and the present reality.

18. LIDLIP requests the Commission on Human Rights that it urge the Minsk Group to facilitate direct dialogue between the authorities of Azerbaijan and Mountainous-Karabakh.

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